THE SECRETARY OF THE INTERIOR

WASHINGTON

May 12, 2009

Honorable Lisa Murkowski
United States Senate
Washington, DC

Dear Senator Murkowski:

I am responding to your May 6, 2009 letter to me. In that letter, you expressed concern regarding a number of decisions that I have made in the past several weeks, suggesting that they do not square with my responsibility to be a good steward for the natural resources on our public lands. I welcome the opportunity to respond to your letter, and I look forward to working with you and your staff to address the challenges and opportunities within the jurisdiction of the Interior Department that affect Alaska and the nation.

I am committed to advancing a balanced agenda at the Interior Department – an agenda that promotes the responsible extraction of valuable energy supplies from our public resources, but that protects the public interest, that is based on sound science, and that complies fully with the law. We may not always agree on the precise definition of that standard in individual circumstances, but I am committed to discussing its application with you and other members of Congress as the Interior Department moves forward on these issues.

When I arrived in office, I was required to address a number of situations in which the prior Administration had expedited decisions at the end of its tenure that did not give adequate consideration to public input or that violated legal requirements. I have endeavored to do so in a balanced way that reflects the Obama Administration's commitment to openness, transparency and strict adherence to the law. You express concern about decisions I have made regarding administration of the Endangered Species Act, energy development on the Outer Continental Shelf, the withdrawal of 77 oil and gas leases in Utah and mountaintop mining-related requirements. I hope you will find the following explanation helpful.

Endangered Species Act

From my view, the prior Administration rushed through a revision to the Endangered Species Act's long-standing approach to the ESA consultation process at the end of its tenure. The rule reversed a 20-year practice under which agencies sought input from expert scientists at the U.S. Fish & Wildlife Service and National Marine Fisheries Service before making a determination of whether proposed actions may affect endangered or threatened species.

On March 3, 2009, President Obama issued a Presidential memorandum that expressed serious concerns about how the rule change undercut the role of the expert science agencies in administering the ESA. He asked me to consider taking additional steps to address the situation. Congress also explicitly authorized the Interior Department to revert to the long-standing ESA consultation rule that had been operating well for many years while these concerns are reviewed.

While reversing the Bush Interior Department's rule, I also made clear that I am open to making changes in the ESA consultation process, after a more comprehensive review of the process, with strong input from non-political experts in the agencies that administer the statutes. We welcome your participation in this important effort.

In a related action, I announced on Friday that the Department will be keeping in place the Section 4(d) rule that describes certain protections for polar bears which are listed as threatened under the ESA. I also reiterated that we would be taking a common sense approach to administering the ESA when it comes to climate change. We do not believe that ESA consultations are required for projects that emit greenhouse gas emissions in cases in which such emissions cannot be casually linked to specific impacts on specific species. We have made this point forthrightly, and will continue to do so. I expect that the Department of Justice will rely on this position in any litigation involving the United States on these issues, and that courts will take judicial notice of the Department's views in this regard in any third party litigation.

I submit to you that the combination of these decisions and statements provide a very clear view of the direction that this Administration is taking with regard to implementing the Endangered Species Act in the context of climate change.

Energy Development on the Outer Continental Shelf

Your letter interprets a "180-day delay of the [next] 5-year Outer Continental Shelf leasing plan" as a manifestation of my interest as slowing down energy development on the Outer Continental Shelf. My position on the OCS is that the development of energy resources there will continue to be one of the most important opportunities for advancing energy independence.

I decided to take a more comprehensive approach for evaluating the development of offshore energy resources because I believe that we will make better decisions if: (1) we provide the interested public with facts that will help inform consideration of this important issue, which is why I asked the Minerals Management Service and the United States Geological Survey to summarize and disseminate information pertinent to this issue; (2) we consider the full range of energy opportunities on the OCS, which is why I

asked MMS and USGS to address the renewable energy potential on the OCS, in addition to oil and gas potential; and (3) we provide a more robust and meaningful opportunity for full public input, which is why I held four public meetings on this important subject around the country – including in Anchorage.

On a related point, your letter suggests that I have not moved quickly enough to respond to recent Court of Appeals decision which vacated the current five-year plan for oil and gas development on the Outer Continental Shelf. This is another situation in which I have been confronted with an "overhang" from the prior Administration's actions. The court has found that the prior Administration failed to follow legal requirements when undertaking the environmental analysis that accompanied the promulgation of the OCS five-year plan, putting in question the validity of thousands of lease-related actions that have occurred under the current five-year plan.

In a brief that the Department of Justice has filed, we have taken the position that we do not believe that the five-year plan should be vacated. We will need to address the environmental defect that was the basis for the court's decision, and we are evaluating how to approach that issue at the same time that we are petitioning the court to clarify or amend its decision. As these facts illustrate, I am giving priority attention to this issue.

Withdrawal of 77 Oil and Gas Leases in Utah

Your letter also referenced my decision to withdraw 77 oil and gas leases in Utah. Your letter suggested that this decision reflects a predisposition against oil and gas leasing activity. My decision to withdraw 77 parcels in Utah was taken within the context of my approval of literally hundreds of new onshore and offshore leases. Since taking office, more than 1.5 million acres and more than 1200 parcels of onshore lands have been leased for oil and gas exploration, along with more than 1.7 million acres of offshore lands. I personally attended the offshore lease sale in New Orleans in April.

As for the 77 parcels in question, I withdrew the leases after a federal court had enjoined the sale and ruled that the prior Administration had failed to follow legal requirements when preparing for the sale. In particular, the court ruled that BLM had failed to conduct an adequate air pollution analysis under the National Environmental Policy Act. In addition, the court ruled that BLM had likely violated the Federal Land Policy Management Act because it could not determine the potential impacts that the lease sale may have on Canyonlands National Park, Dinosaur National Monument, or Arches National Park.

Given the court's ruling, I made the decision to undertake a review of the serious concerns that had been raised by the court. I have committed to undertake that review and to do so expeditiously.

Mountaintop Mining Regulations

Your letter also expressed frustration with my determination that "the Bush Administration's mountaintop coal mining rule is 'legally defective.'"

Once again, the actions of the prior Administration left me with no choice. When the so-called "stream buffer zone" rule that the prior Administration finalized in its closing months was challenged in the courts, the Department of Justice informed me that the rule suffered from serious legal errors. Rather than attempt to defend a rule that included such errors, I decided to take two steps: (1) continue to implement the stream buffer zone regulations that were promulgated by the Reagan Administration, and which are still in place in 49 of the 50 states; and (2) initiate a comprehensive rulemaking that would consider updating the regulations, but that would do so in a way that complies fully with all legal requirements. You may disagree with my decision, but I believe that it represents a prudent course of action, and one that is consistent with the Obama Administration's commitment to openness, transparency, and strict adherence to the environmental laws.

I appreciate your raising these concerns with me. I look forward to working with you in addressing our challenging responsibilities as stewards of our nation's natural resources. In order to work with you and your staff, I need my Deputy Secretary-Designee, David J. Hayes, confirmed by the Senate. Mr. Hayes was reported favorably out of Committee nearly two full months ago, and the delays in his confirmation are hampering my ability to serve the President, and to work with you and your Committee.

Please do not hesitate to call me if you have any questions.

Sincerely,

Ken Salazar

Ken Salazar

cc: Honorable Harry Reid
Honorable Mitch McConnell
Honorable Richard Durbin
Honorable Jon Kyl
Honorable Jeff Bingaman